



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2020-0117]

RIN 1625-AA00

Safety Zones; Hampton Roads Bridge-Tunnel Expansion Project,

Hampton/Norfolk, VA

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing safety zones for certain waters of the Hampton Flats, Willoughby Bay, a defined area between Phoebus Channel and the North Trestle Bridge, and 3 zones around the North Trestle Bridge including the North Island, the South Trestle Bridge including the South Island, and the north and south side of the Willoughby Bay Bridge. This action is necessary to provide for the safety of life on these navigable waters in support of the Hampton Roads Bridge-Tunnel Expansion Project that will take place from 2021 through 2025. This rule prohibits persons and vessels from being in the safety zones unless authorized by the Captain of the Port Sector Virginia or a designated representative or under conditions specified in this rule.

DATES: This rule is effective without actual notice [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], though December 25, 2025. For the purposes of enforcement, actual notice will be used from September 10, 2021, until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2020-0117 in the search box and

click "Search." Next, in the Document Type column, select “Supporting & Related Material.”

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LCDR Ashley Holm, Waterways Management Division Chief, Sector Virginia, U.S. Coast Guard; telephone 757-668-5580, email Ashley.E.Holm@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	U.S. Coast Guard Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
HRBT	Hampton Roads Bridge-Tunnel
HRCP	Hampton Roads Connector Partners
NPRM	Notice of proposed rulemaking
NSRA	Navigation Safety Risk Assessment
§	Section
U.S.C.	United States Code
USCG	United States Coast Guard
USACE	United States Army Corps of Engineers

II. Background Information and Regulatory History

In April 2019, the Virginia Department of Transportation (VDOT) awarded the design and construction of the Hampton Roads Bridge-Tunnel (HRBT) Expansion Project to the Hampton Roads Connector Partners (HRCP), as the Design-Build contractor. The HRBT Expansion Project is a major road transport infrastructure project that will create an 8-lane facility with 6 consistent use lanes along 9.9 miles of Interstate 64 (I-64), from Settler’s Landing Interchange in Hampton, Virginia, to the Interstate 564 (I-564) interchange in Norfolk, Virginia. To better understand the waterways impact from the project, the USCG and U.S. Army Corps of Engineers (USACE) recommended the submission of a formal Navigation Safety Risk Assessment (NSRA) and Tunnel Construction Plan (TCP) prior to any permit or approval action by the U.S. Army Corps

of Engineers.¹ The NSRA identified three key objectives for consideration. The first included potential impacts to current and forecasted vessel traffic directly related to the bridge and tunnel construction including all on-water operations and staging areas. The second aimed to identify the best/least disruptive times to schedule movement of construction-related vessels. Finally, it identified the measures necessary for implementation in order to minimize potential hazards to navigation. On-water construction activities are expected to last approximately 5 years (2021–2025). In support of construction efforts, multiple surface craft will be necessary on-site, transiting to and from, as well as pre-staged, to ensure continued operations are maintained. The increase in waterborne traffic in the vicinity of construction areas and staging areas will introduce hazards to waterways users prior to and throughout the duration of the construction project. Specific hazards during the construction project include the proximity of dozens of construction-related vessels in the bridge area and fleeting areas, including material barges and construction equipment barges. In addition, construction of navigable spans by this equipment, as well as construction lighting and loud construction activity noises will make normal passage through the bridge areas unsafe except in areas specifically established as safe transit corridors by the project contractors, HRCP. The Sector Virginia Captain of the Port (COTP) has determined that these potential hazards associated with the HRBT Expansion Project will be a safety concern for anyone transiting in the vicinity of on-water construction activities related to the project. To discuss these safety concerns, representatives of the HRCP along with the COTP's staff conducted a series of outreach meetings. These meetings covered the HRBT Expansion Project and the notional safety zones that would mitigate the hazards discussed above. Due to the COVID-19 pandemic, those outreach meetings were

¹ See Memorandum of Agreement between the United States Army Corps of Engineers and the United States Coast Guard, dated June 2, 2000 (available at: <https://usace.contentdm.oclc.org/utis/getfile/collection/p16021coll11/id/2518>).

conducted virtually on May 5th, 6th, and 7th, 2020. They were announced beforehand by a marine safety information bulletin² issued by the COTP, which is distributed to over 1,000 subscribed maritime stakeholders by email, along with direct email notification to community organizations in the coastal areas of the cities of Norfolk and Hampton, Virginia, which are the two cities in the immediate area of the construction activity. Twenty-six individuals in addition to Coast Guard personnel participated in the meetings. The feedback received was consistent that the HRBT Expansion Project would create hazards to navigation for recreational vessels and that the suggested safety zones would help mitigate the risks. Additionally, community members expressed support that HRCF would have the ability to designate safe transit corridors through the South Trestle Bridge and Willoughby Bay Bridge to ensure that coastal property owners could still access the waters of Hampton Roads and southern Chesapeake Bay during the duration of the construction project. The text of the regulation has been drafted to incorporate feedback from these sessions.

On August 5, 2021, the Coast Guard published a notice of proposed rulemaking (NPRM) titled “Safety Zones; Hampton Roads Bridge-Tunnel Expansion Project,” 86 FR 42758. There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this project. During the comment period that ended September 7, 2021, we received no comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest. Immediate action is needed to respond to the potential safety hazards associated with the HRBT construction project.

² See USCG Sector Virginia Marine Safety Information Bulletin #20-113 (available at <https://content.govdelivery.com/accounts/USDHSCG/bulletins/289cb80>).

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Virginia (COTP) has determined that potential hazards associated with the Hampton Roads Bridge Tunnel Project beginning in summer 2021 will be a safety concern for anyone operating within the vicinity of the construction related activity. The purpose of this rule is to ensure safety of vessels operating in the vicinity of all construction related activity in support of the HRBT and the navigable waters in the safety zone for the duration of the project.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published August 7, 2021. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes multiple safety zones to promote safety to waterways users during the HRBT Expansion Project. The Coast Guard currently anticipates the need for 6 safety zones. The safety zones will be used to accommodate pre-staged waterborne equipment and establish buffer zones around two marine staging areas, one safe harbor in case of anticipated severe weather, and the marine construction work sites expected in the vicinity of the North Trestle Bridge and North Island, South Trestle Bridge and South Island and the north and south side of the Willoughby Bay Bridge.

The first safety zone (*Zone 1*: Hampton Flats Mooring Area) is being established in the Hampton Flats covering a mooring/staging area to accommodate 6 barges. Specifically, the first safety zone covers all waters of the Hampton Flats, from surface to bottom, encompassed by a line connecting the following points beginning at 36° 59' 40.41"N, 76° 22' 10.66"W, thence to 37° 00' 01.84"N, 76° 21' 01.69"W, thence to 36° 59' 52.62"N, 76° 20' 57.23"W, thence to 36° 59' 31.19"N, 76° 22' 06.20"W, and back to the beginning point. The Hampton Flats Mooring Area will provide critical staging

capability necessary to the project. Once the HRCP begins the installation of mooring buoys within the mooring area, the public will be restricted entry or mooring within the safety zone. Mariners will be required to observe lighted marker buoys along the perimeter and at each of the corners marking the safety zone. In the event of inclement weather, this mooring/staging area will not be able to be used for safe refuge.

The second safety zone (*Zone 2: Phoebus Safe Harbor Area*) is being established as a safe harbor area between Phoebus Channel and the North Trestle Bridge in the event of anticipated severe weather. Specifically, it covers all waters west of the Phoebus Channel, from surface to bottom, encompassed by a line connecting the following points beginning at 37° 00' 34.26"N, 76° 19' 10.58"W, thence to 37° 00' 23.97"N, 76° 19' 06.16"W, thence to 37° 00' 22.52"N, 76° 19' 11.41"W, thence to 37° 00' 32.81"N, 76° 19' 15.81"W, and back to the beginning point. While this rule is effective, no vessel or person would be permitted to anchor within the safety zone during announced enforcement periods without first obtaining permission from the COTP or designated representative. Such announcements will be made by Sector Virginia Broadcast Notice to Mariners and broadcasts on VHF-FM radio. During enforcement periods, mariners will be required to observe lighted marker buoys along the perimeter and at each of the corners marking the safety zone.

The third safety zone (*Zone 3: Willoughby Safe Harbor/Mooring Area*) is being established as a mooring area/safe harbor area in Willoughby Bay. Specifically, it covers all waters of Willoughby Bay, from surface to bottom, encompassed by a line connecting the following five points beginning at 36° 57' 48.68"N, 76° 17' 08.20"W, thence to 36° 57' 44.84"N, 76° 16' 44.48"W, thence to 36° 57' 35.31"N, 76° 16' 42.80"W, thence to 36° 57' 28.78"N, 76° 16' 51.75"W, thence to 36° 57' 33.17"N, 76° 17' 19.43"W, and back to the beginning point. Once the HRCP begins the installation of mooring buoys within the mooring area, the public will be restricted entry or mooring within the safety

zone unless permission from the COTP, HRCP, or their designated representative is granted on a case-by-case basis. Mariners will be required to observe lighted marker buoys along the perimeter and at each of the corners marking the safety zone.

The fourth safety zone (*Zone 4: North Trestle Bridge and North Island*) is being established from surface to bottom for the safety of waterways users in the vicinity of ongoing construction activity on the east and west sides of the Hampton Roads Bridge-Tunnel's north bridge trestle and North Island. No vessel or person at any time will be permitted within the fixed safety zone, 300 feet from the east or west side of the North Trestle Bridge or the North Island. All mariners attempting to enter or depart the Hampton Creek Approach Channel or the Phoebus Channel in the vicinity of the North Island will be required to proceed with extreme caution and maintain a safe distance from construction equipment. Passing arrangements, if necessary, will be allowed to be requested from the on-site foreman via VHF Channel 13 and 16 at any time.

The fifth safety zone (*Zone 5: South Trestle Bridge and South Island*) is being established, from surface to bottom, 300 feet from the east or west side of the South Trestle Bridge or the South Island. This zone is needed for the safety of waterways users in the vicinity of ongoing construction activity on the east and west sides of the Hampton Roads Bridge-Tunnel's south bridge trestle and South Island. No vessel or person at any time will be permitted within the fixed safety zone without permission of the COTP or HRCP, or their designated representatives. HRCP may establish and post visual identification of safe transit corridors that vessels may use to freely proceed through the safety zone. All mariners attempting to enter or depart the Willoughby Bay Approach Channel in the vicinity of the South Island will be required to proceed with extreme caution and maintain a safe distance from construction equipment.

The sixth safety zone (*Zone 6: Willoughby Bay Bridge*) is being established, from surface to bottom, within 50 feet of the north side and 300 feet of the south side of the

Willoughby Bay Bridge. This safety zone is needed for the safety of waterways users in the vicinity of ongoing construction activity on the north and south sides of the Willoughby Bay Bridge. No vessel or person may enter or remain in the safety zone without permission of the COTP, HRCP, or designated representative, except that vessels are allowed to transit through marked safe transit corridors that HRCP shall establish for the purpose of providing navigation access for residents located north of the Willoughby Bay Bridge through the safety zone. All mariners attempting to enter or depart residences or commercial facilities north of the Willoughby Bay Bridge through the safe transit corridors or other areas of the safety zone when granted permission shall proceed with caution and maintain a safe distance from construction equipment. Mariners requesting to transit through other areas of the safety zone may do so at any time by contacting the on-site foreman via VHF Channel 13 and 16.

The regulatory text appears at the end of this document.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on a comprehensive marine traffic survey conducted for all current and forecasted vessel traffic in the vicinity of the HRBT

Expansion Project. The survey was used to inform mitigation strategies, minimize disruptions to navigation, reduce risks of marine casualties and determine the size, location, duration and time-of-day of the recommended safety zones.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V. A. above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The

Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive

023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves 6 safety zones that will be activated for the duration of the HRBT Expansion Project. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

2. Add § 165.519 to read as follows:

**§ 165.519 Safety Zones; Hampton Roads Bridge-Tunnel Expansion Project,
Hampton/Norfolk, VA.**

(a) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Virginia (COTP) in the enforcement of the safety zone. The term also includes an employee or contractor of Hampton Roads Connector Partners (HRCP) for the sole purposes of designating and establishing safe transit corridors, to permit passage into or through these safety zones, or to notify vessels and individuals that they have entered a safety zone and are required to leave.

(b) *Locations and zone-specific requirements--*(1) *Zone 1, Hampton Flats Mooring Area--*(i) *Location.* All waters of the Hampton Flats, from surface to bottom, encompassed by a line connecting the following points beginning at 36° 59' 40.41"N, 76° 22' 10.66"W, thence to 37° 00' 01.84"N, 76° 21' 01.69"W, thence to 36° 59' 52.62"N, 76° 20' 57.23"W, thence to 36° 59' 31.19"N, 76° 22' 06.20"W, and back to the beginning point.

(ii) *Requirements.* No vessel or person may enter or remain in the safety zone without permission of the COTP, HRCP, or designated representative. Mariners must observe lighted marker buoys along the perimeter and at each of the corners marking the safety zone.

(2) *Zone 2, Phoebus Safe Harbor Area--*(i) *Location.* All waters west of the Phoebus Channel, from surface to bottom, encompassed by a line connecting the following points beginning at 37° 00' 34.26"N, 76° 19' 10.58"W, thence to 37° 00' 23.97"N, 76° 19' 06.16"W, thence to 37° 00' 22.52"N, 76° 19' 11.41"W, thence to 37° 00' 32.81"N, 76° 19' 15.81"W, and back to the beginning point.

(ii) *Requirements.* No vessel or person may enter or remain in the safety zone

during announced enforcement periods without permission of the COTP, HRCF, or designated representative. Such enforcement periods will be announced by Sector Virginia Broadcast Notice to Mariners and broadcasts on VHF-FM radio. During enforcement periods, mariners shall observe lighted marker buoys along the perimeter and at each of the corners marking the safety zone.

(3) *Zone 3, Willoughby Bay Mooring Area--(i) Location.* All waters of Willoughby Bay, from surface to bottom, in the area encompassed by a line connecting the following points beginning at 36° 57' 48.68"N, 76° 17' 08.20"W, thence to 36° 57' 44.84"N, 76° 16' 44.48"W, thence to 36° 57' 35.31"N, 76° 16' 42.80"W, thence to 36° 57' 28.78"N, 76° 16' 51.75"W, thence to 36° 57' 33.17"N, 76° 17' 19.43"W, and back to the beginning point.

(ii) *Requirements.* No vessel or person may enter or remain in the safety zone without permission of the COTP, HRCF, or designated representative. Mariners must observe lighted marker buoys along the perimeter and at each of the corners marking the safety zone.

(4) *Zone 4, North Highway Bridge Trestle and North Island--(i) Location.* All waters, from surface to bottom, located within 300 feet of the east or west side of the Hampton Roads Bridge-Tunnel's north highway bridge trestle, including North Island, to the shore of the City of Hampton. No vessel or person may enter or remain in the safety zone without permission of the COTP, HRCF, or designated representative.

(ii) *Requirements.* All mariners attempting to enter or depart the Hampton Creek Approach Channel or the Phoebus Channel in the vicinity of the North Island must proceed with extreme caution and maintain a safe distance from construction equipment.

(5) *Zone 5, South Highway Bridge Trestle and South Island--(i) Location.* All waters, from surface to bottom, located within 300 feet from the east or west side of the Hampton Roads Bridge-Tunnel's south highway bridge trestle, including South Island, to

the shore of the City of Norfolk.

(ii) *Requirements.* No vessel or person may enter or remain in the safety zone without permission of the COTP, HRCP, or designated representative. HRCP may establish and post visual identification of safe transit corridors that vessels may use to freely proceed through the safety zone. All mariners attempting to enter or depart the Willoughby Bay Approach Channel in the vicinity of the South Island shall proceed with extreme caution and maintain a safe distance from construction equipment.

(6) *Zone 6, Willoughby Bay Bridge--*(i) *Location.* All waters, from surface to bottom, located along the Willoughby Bay Bridge highway trestle and extending 50 feet to the north side of the bridge and 300 feet to the south side of the bridge along the length of the highway trestle, from shore to shore within the City of Norfolk.

(ii) *Requirements.* No vessel or person may enter or remain in the safety zone without permission of the COTP, HRCP, or designated representative, except that vessels are allowed to transit through marked safe transit corridors that HRCP shall establish for the purpose of providing navigation access for residents located north of the Willoughby Bay Bridge through the safety zone. All mariners attempting to enter or depart residences or commercial facilities north of the Willoughby Bay Bridge through the safe transit corridors or other areas of the safety zone when granted permission shall proceed with caution and maintain a safe distance from construction equipment.

(c) *General requirements.* (1) Under the general safety zone regulations in subpart C of this part, no vessel or person may enter or remain in any safety zone described in paragraph (b) of this section unless authorized by the COTP, HRCP, or designated representative. If a vessel or person is notified by the COTP, HRCP, or designated representative that they have entered one of these safety zones without permission, they are required to immediately leave in a safe manner following the directions given.

(2) Mariners requesting to transit any of these safety zones must first contact the HRCP designated representative, the on-site foreman, via VHF-FM channels 13 and 16. If permission is granted, mariners must proceed at their own risk and strictly observe any and all instructions provided by the COTP, HRCP, or designated representative to the mariner regarding the conditions of entry to and exit from any location within the fixed safety zones.

(d) *Enforcement.* The Sector Virginia COTP may enforce the regulations in this section and may be assisted by any Federal, state, county, or municipal law enforcement agency.

Dated: September 10, 2021.

Samson C. Stevens,
Captain, U.S. Coast Guard,
Captain of the Port Virginia.

[FR Doc. 2021-20006 Filed: 9/15/2021 8:45 am; Publication Date: 9/16/2021]